HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No.1486 of 1999

JUDGMENT:

This appeal is filed by the unsuccessful plaintiff against the judgment and decree dated 08.04.1999 in the suit O.S.No.237 of 1986 passed by the Principal Senior Civil Judge, Guntur.

2. This is a first appeal and for the sake of convenience, the parties are referred to the plaintiff and defendant only.

3. The plaint schedule property is a site situated in Agathavarappadu village of Gaddipadu Panchayat. The defendant agreed to sell the suit schedule site to the plaintiff on 30.07.1983 for Rs.42,500/- at the rate of Rs.85/- per square yard. The defendant executed an agreement of sale on the same date in favour of the plaintiff having received an advance amount of Rs.5,000/- towards sale consideration. The defendant agreed to obtain all necessary permissions for executing the sale deed on or before 15.10.1983 and to register the sale deed after receiving the balance of sale consideration. The plaintiff was given possession of the schedule site subsequently for the purpose of facilitating the construction of his godown and so the plaintiff is in possession and enjoyment of the same. Since the month of September 1983, the plaintiff was asking the defendant to get the sale deed registered in his name by receiving the

remaining sale consideration, which is ready with him. But, the defendant was stating that applications for necessary permissions were made to the concerned authorities, but permissions were not received. Therefore, the plaintiff issued a legal notice dated 20.03.1986 to the defendant calling upon her to execute a regular registered sale deed in his favour. The defendant got issued a reply notice dated 31.05.1986 with false averments. The plaintiff was always ready with the money required to be paid towards the balance of sale consideration and was willing to take the sale deed in his favour, but the defendant was avoiding to perform her part of the contract. Hence, the suit.

4. The defendant in her written statement contended that the plaintiff and his father originally were the owners of the suit schedule house and adjoining sites on three sides; that they have divided the site into house plots and offered them for sale; that her husband and two other persons had entered into a contract with the plaintiff on 22.07.1982 for purchase of Ac.0.10 cents each; that subsequently, she obtained registered sale deed dated 13.11.1982 for the Ac.0.10 cents of site purchased under the agreement of sale; that the plaintiff and his father originally represented that a Housing Colony would be built in that area and on the said representation, the plaintiff and other persons were induced to purchase the sites; that subsequently the plaintiff and his father contrary to the said terms began to construct a

Ginning Mill as well as a godown to the east and west of the plots sold to her and others; that by such construction it became very difficult to construct a residential house in her plot; that her husband and others protested for the construction of the Ginning Mill and godown, but the plaintiff proceeded with the construction; that in those circumstances, she was left with no other option except to sell back the site to the plaintiff himself; that the plaintiff therefore entered into a contract of sale dated 30.07.1983 with her offering to purchase the schedule site at the rate of Rs.85/- per square yard; that the plaintiff paid advance of Rs.5,000/- and it was agreed that a regular sale deed has to be executed within two months and fifteen days thereafter; that she should obtain necessary permission from the Urban Land Ceiling authorities; that though it was mentioned that the defendant should obtain necessary permission, the plaintiff himself prepared necessary applications and obtained her signatures thereon; that the plaintiff himself promised that he would get the permission; that she, however, received communication dated 25.07.1984 from the Urban Land Ceiling authorities refusing permission; that the plaintiff again obtained her signatures on another set of ULC applications stating that he would again try to obtain permission, but no orders granting permission were received by her; that the suit contract of sale, therefore, became unenforceable by the doctrine of frustration; that the plaintiff in the said circumstances is not

entitled to seek the relief of specific performance of the suit contract of sale; that it is curious to note that the plaintiff, who claimed that the possession of the suit schedule property was delivered to him on the date of suit contract itself and claimed that he is continued in possession, is seeking the relief of possession of the suit schedule property, and hence, the suit may be dismissed with costs.

5. Based on the above pleadings, the following issues were settled for trial:

i) Whether the plaintiff is entitled to the specific performance of the suit contract?

ii) Whether the suit contract became unenforceable by the doctrine of frustration?

iii) To what relief:

Additional Issue:

iv) Whether the defendant is liable to pay damages for Rs.5,000/- with interest as claimed.

6. The plaintiff himself was examined as PW.1 and Exs.A.1 to A.5 were marked. The defendant's husband was examined as DW.1 and Exs.B.1 & B.2 were marked.

7. Based on the above issues, the parties went to trial and after hearing the parties, the lower Court did not find any merit in the plaintiff's case as far as decree for specific performance is concerned and dismissed the same. However, the alternative relief for the refund of the amount paid along with interest was allowed by the lower Court. It is

this judgment and decree that is now impugned in the present appeal.

8. This Court has heard Sri G. Vasantha Rayudu, learned counsel for the appellant/plaintiff and Sri K. Chidambaram, learned counsel for the respondent/ defendant.

9. The short and simple questions that arise in this case and which are the bone of contention between both the parties was whether the contract could not be performed because the ULC permission was not obtained and whether the plaintiff's conduct in the lower Court entitles him to a decree of specific performance.

10. It is settled law which does not require repetition that specific performance should not be granted merely because the court feels just to do so. The plaintiff in a case for specific performance must prove his continuous readiness and willingness to perform his part of the contract. His conduct should be blameless, since the relief that is sought is an equitable relief. This is the position of law, which in view of this Court does not admit of any doubt.

11. Even in the lower Court, the focus was on the ULC permission both in the oral evidence and in the arguments. The case law on these issues was also referred to in the lower Court judgment and the Court came to a conclusion as far as issue No.1 is concerned that the defendant could not perform her part of contract because of the lack of the ULC certificate.

12. This Court on an examination of the evidence finds that the plaintiff himself deposed in page-4 of the cross examination on 23.11.1998 with regard to the house plots next to the suit schedule property, which reads as under:

> "Even by the time of sale of the said three lands, there were residential houses belonging to me on the western side of the schedule properties. After obtaining permission from Urban Land ceiling authorities I sold those 3 lands I presented those permission letters before the Sub Registrar at the time of the registration of the sale deeds. Even though the land is sold as agricultural land in those days, permission from Urban Land ceiling authorities was required."

13. It is in the evidence that permission from ULC was required and that the plaintiff gave the requisite forms to the defendants. The defendant then signed the forms and it is the case of the defendant that the plaintiff submitted the said forms to the ULC authorities. There is some cross-examination on the issue as to who submitted the forms, but the fact remains that under Ex.B.1, which was issued on 25.07.1984, the ULC permission was refused. In view of the fact that the ULC authorities have rejected the permission, the defendant's case both in the lower Court and in the appeal is that the contract could not be performed.

14. The learned counsel for the appellant/plaintiff however relied upon the judgment reported in ***K. Venkateswarlu and others v. K. Pedda Venkaiah and***

others[1] and argued that any prohibition under law will not apply to the transfer of property. It is his contention that statutory prohibitions are required to be construed strictly and that there is no fetter or other reason for not transferring the property. The learned counsel relied upon this judgment to argue that there is no statutory prohibition to transfer the property and that the defendant was not ready to perform her part of the contract although the plaintiff is ready.

15. In reply to this, the learned counsel for the respondent/defendant stated that this citation reported in ***K. Venkateswarlu***'s case (1 supra) is a judgment under the A.P. Vacant Lands in Urban Areas (Prohibition of Alienation) Act 1972 and not under the Urban Ceiling Act. He also argued that permission u/s.26 of the ULC Act was necessary for transfer of the property. He also pointed out that the admission of PW.1 to this effect that for all the plots of land next to the suit schedule property, he obtained the permission and presented the same to the Sub-Registrar for registration of the document. The learned counsel also pointed out that the ULC permission was actually refused in July 1984 and despite the knowledge of the same, the plaintiff did not take any steps to file the suit for specific performance.

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[1] AIR 2002 AP 8

16. Relying upon ***K.S. Vidyanadam and others v. Vairavan***[2], the learned counsel for the respondent/defendant argued that from the date of the agreement viz., 30.07.1983 till March 1986, the plaintiff did not take any steps to get the sale deed registered. It is the contention of the learned counsel for the respondent that the agreement of sale dated 30.07.1983 fixed a period of 2½ months for execution of the sale deed i.e., the sale deed was to be obtained by October 1983. It is his contention that out of the agreed sale consideration of Rs.42,500/-, only Rs.5,000/- was paid. Neither was the balance consideration tendered nor was readiness exhibited in any other manner according to the learned counsel. He strongly relied ***K.S. Vidyanadam's*** case (2 supra) and pointed out that the total inaction for 2 ½ years in the case before the Supreme Court lead to the rejection of the claim for specific performance. He urges for a similar finding in this case also.

17. This Court finds substantial force in the contentions urged by the learned counsel for the respondent/defendant. Ex.B.1 clearly shows that the permission was rejected in July 1984 itself. It is also a fact that Ex.A.1-agreement of sale fixed a period of 2½ months for completion of the transaction. However, till the first notice issued by the plaintiff in March 1986, nothing was done by the plaintiff to prove his readiness and willingness. The

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[2] (1997) 3 SCC 1

plaintiff was aware of the rejection of the ULC permission and in fact the deposition of DW.1 is to the effect that the second application was also made for ULC. Although there is no documentary evidence to show whether the second application was made, still the fact remains that from July 1983 the date of agreement of sale till Ex.A.2-legal notice dated 20.03.1986, the plaintiff did not evince any interest.

18. This Court therefore agrees with the contention of the learned counsel for the respondent/defendant that the plaintiff did not exhibit and prove his readiness and willingness. The judgment cited by the learned counsel for the respondent in ***K.S. Vidyanadam's*** case (2 supra) applies with greater force to the facts of the present case. The decision in ***Matedin Agarwal v. Syed Abdul Razack***[3] is also applicable as the facts therein are very similar to the case on hand. This judgment was relied upon by the lower Court. Therefore, this Court holds that the finding of the lower Court on issue No.1 is correct and valid. The plaintiff did not prove his readiness and willingness. The refusal by the ULC authorities to grant permission for sale and the inaction of the plaintiff disentitles him from seeking relief of specific performance. This Court concurs with the finding of the lower court on issue No.1. This Court also agrees that the contract became unenforceable because of the refusal by the ULC authorities to grant permission for sale of the land. Issue No.2 and Issue

[3] 1997 (1) APLJ 13 (SN)

No.1 are integrally connected and both the issues are decided against the plaintiff/appellant and in favour of respondent/ defendant.

19. As far as issue No.3 is concerned, it is the alternative relief of the refund of advance amount of Rs.5,000/- paid at the time Ex.A.1 was entered into. The prayer in the amended plaint was for recovery of Rs.5,000/- along with interest at 18% from the date of Ex.A.1 till date of recovery. However, the lower Court gave a decree of refund of Rs.5,000/- along with interest at 12% from the date of contract till the date of decree, with further interest at 6% per annum on a sum of Rs.5,000/- from the date of decree till realization. Proportionate costs were also awarded. This finding of the lower Court is broadly in accordance with Section 34 CPC. The defendant also did not argue much about this and did not also challenge the same. Thus, the finding on this issue is also confirmed.

20. In addition, the following passage from ***Matedin Agarwal***'s case (3 supra) is very relevant for the present decision.

> "Specific performance is by no means an absolute right but one which rests entirely in judicial discretion depending on the facts and circumstances of a particular case. When once the discretion has been exercised in a particular way by the trial Court, it is not open to the appellate Court to interfere lightly unless it is shown that the discretion has been exercised arbitrarily or against judicial principles."

21. For all the above reasons, this Court concurs with the findings of the lower Court and holds that there are no grounds made out to set aside the judgment and decree dated 08.04.1999 in O.S.No.237 of 1986 of the Principal Senior Civil Judge, Guntur. The appeal is, therefore, dismissed. However, in the circumstances of the case, each party is directed to bear their own costs.

22. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 09.02.2018
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